

CHAPTER 14

THE ETHICS OF THE NEW LIBERALISM

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1 NEW LIBERALS AND INTERNATIONAL RELATIONS

A great deal of international relations theory defines itself in relation to the three traditions (Wight 1991). In the past two decades, this act of self-definition has taken two broad forms. In one case, scholars have sought to transcend these traditions and their various affiliates. For them, Thomas Hobbes, Immanuel Kant, and John Locke establish modernity. Writing that configures these individuals as central, therefore, is itself keyed into a particular moment in time and a particular way of thinking through the world. The work of poststructuralists or critical theorists, then, is an expression of distance from, and dissatisfaction with, these categories of enlightenment thought reproduced in much international relations theorizing (Der Derian 1992; Walker 1993). This is work that positions itself as *after* the three great projects of modernity (Der Derian and Shapiro 1989).

A less iconoclastic (perhaps less baleful) form of critique works within these traditions and has sought to deepen and extend the insights found in the classical categories. The neo-neo debates are an obvious example of this refinement project. More recently, though, the two most appealing intellectual refurbishments have

occurred in the work of constructivists and new liberals. Constructivists have sought to understand the way in which ideas are socially constitutive. Put bluntly, while actors have ideas, it is true also that ideas have actors. One aspect of this, important for the purposes of this chapter, is that international legal norms are thought to perform a dynamic role in constituting the global political order.

New liberalism, the subject of this chapter, makes two important contributions. First, it wants to place liberal theory on a scientific footing and offer it (at least) parity with the other major paradigms of international relations thought (by giving it empirical bite, by grounding it in testable propositions, by bringing some coherence to its textual formulations) (this is Andrew Moravcsik's project). Secondly, it takes the vague entreaties of Wilsonian liberalism and the outmoded sovereigntisms (statisms) of public international law, and converts them into a legal theory about how norms are created and how they operate in a world defined not by the interaction of opaque nation states but by transgovernmentalism: a multileveled international law, policy, and politics operating across highly permeable national boundaries (this is Anne-Marie Slaughter's project). These projects have been, deservedly, celebrated. They are imaginative and supple responses to a changed global environment.

In order to untangle some of the key propositions of new liberalism, I propose to consider three key new liberal texts. These are Moravcsik's "Taking Preferences Seriously" (1997), Slaughter's *A New World Order* (2004), and the recent Princeton Project's *Forging a World of Liberty under Law* (Ikenberry and Slaughter 2006). The first text is new liberalism's methodological blueprint; it is a persuasive, widely read, and considered piece of theorizing that sought to position new liberalism alongside the great "isms" of international relations theory. The second text, Slaughter's *A New World Order*, seeks to describe a world already transformed by the norms and institutions produced by liberal law and politics. This represents a move from the sometimes dry theorizing of Moravcsik (1997) to a more popular normativism. The third text marks the first explicit effort to present new liberal theory as government policy. *Forging a World of Liberty* self-consciously mimics the style and intentions of the George W. Bush administration's two National Security Strategies (e.g. White House 2006). This prospectus for US foreign policy combines the feel-good normativity of new world order with a hard-headed pragmatism about violence and war; it as an approximation of what new liberal foreign relations might look like.

2 TAKING PREFERENCES TOO SERIOUSLY

Moravcsik (1997) faces a familiar liberal paradox—how to be liberal and scientific, or how to combine the crusading spirit of liberal policy with heavyweight

international relations theory. His response is to do away largely with liberalism's ethical (or political) tendencies altogether. The "non-ideological, non-utopian" project of Moravcsik involves liberating liberalism from its normative biases (its celebration of progress, its concerns about poverty and redistribution, its benevolent paternalism) by predicating liberal theory on the strategic calculations and interactions of rational persons, groups of whom at the domestic level determine state interests and preferences at the international level.

How, then, might we characterize the "ethics of new liberalism?" This denuded liberalism of Moravcsik's is illuminating as a description of strategic interaction, but it leaves some questions unanswered. These can be divided into a set of questions around the identity of the "political," and a tranche of problems surrounding Moravcsik's assumptions about the state.

First, to the problem of politics; there is little discussion of how rational actors come to possess preferences in the first place (Moravcsik 1997, 517). In particular, the possibility that there exists some sort of feedback loop in which political and strategic interaction might play a role in defining preferences and demands is not acknowledged. According to Moravcsik (1997, 517), people have tastes, commitments, and endowments, but these are regarded as somehow prior to politics. Individuals bring these attributes *to* politics; political life, then, involves competition and cooperation between and among these preconstituted actors. Their tastes and commitments are "pre-political" (Reus-Smit 2001), though their "deep, irreconcilable differences in beliefs about the provisions of public goods..." (Moravcsik 1997, 517) presumably are political. This distinction between the pre-political (the social?) and the political is surely questionable. Is it plausible, for example, to think of a person brought up, say, as a Labour Party supporter in England possessing a set of "social commitments" (held independently of politics) and a repertoire of "beliefs" (forged, engaged, and modified in political action)?

A second problem with new liberalism is the way in which it conceives of the state. State preferences are shaped and constituted at the domestic level by the political interplay of individuals and groups seeking to maximize leverage at the international level. Once these interests have been constituted, they remain largely unmodified by the operation of other actors in the international system. These fundamental preferences may shift but only in response to political reconfigurations at the domestic level (Moravcsik 1997, 519). This theoretical construct has the merit of dislodging some realist assumptions about the universalizability and homogeneity of state behavior (for example, that states will always maximize security or defend sovereignty), but what it replaces them with is a set of unsustainable demarcations between national and international space. This is problematic in two respects. First, it resurrects the very distinction between international and domestic politics that much liberal theory was supposed to eliminate and, secondly, it suggests that "fundamental preferences," in thrall to political reorientations internally, are nonetheless independent of convulsions or changes in the international environment. This

version of new liberalism, then, has too little to say about the way in which states establish self-understandings as a consequence of their international position and regardless of the caprices of internally constituted elites (Australia's self-image as a "good international citizen" is an example of this).

The deeper question about Moravcsik's strategy is whether liberal states *do* behave differently, as new liberalism predicts that they will. This question links Moravcsik's work to Slaughter's more transparently normative agenda. If states' behavior is conditioned by their internal preferences, then this has very great implications for international order generally. It means, for example, that the realist focus on material power, the institutionalist faith in international machinery, and the legalist obsession with creating and identifying autonomous norms are each in their own way misplaced, and likely to generate inconclusive or disappointing research agendas and errant policy. For new liberals, norms and institutions will work better, and power will be rendered relatively peripheral, among states where domestic preferences are mutually reinforcing. Moravcsik argues that both war and intensified cooperation can be explained by the configuration of domestic preferences. So, war in the twentieth century is marked by global conflict between rival ideologies (communism, liberalism, and fascism), while supranational cooperation (involving the pooling of sovereignty) is a feature of regions in which there is uniform commitment to "democratic norms" (Moravcsik 1997, 527). The most salient and certainly most disseminated insight derived from all this is the democratic peace: "as close as anything we have to an empirical law in international relations" (Russett 1993, 139, quoting Jack Levy). As Moravcsik (1997, 531) puts it: "Liberal democratic institutions tend not to provoke such [major] wars because influence is placed in the hands of those who must expend blood and treasure and the leaders they choose."

Liberal states, though, have been far from pacific in their relations with other states (including embryonic democracies). The two most recent large-scale aggressions (in Kosovo and Iraq) have been committed by liberal coalitions.¹ Indeed, there may be three reasons why liberal societies have a greater propensity to go to war than other states. First, late-modern liberal polities have become hugely adept at shaping and cajoling public opinion. Secondly, it is not at all clear, contra Moravcsik, that liberal states must expend (much) blood in pursuing contemporary war (and are accordingly more likely to be restrained by citizens bearing the costs of those wars). Thirdly, the north Atlantic states now regard themselves as representatives of humanity (fighting humanitarian wars or wars against terror). No longer engaged in war at all but rather in what Carl Schmitt (2003) called "pest control," they are free to engage in armed action without the stigma of "war." What we are left with is not the democratic peace but the abolition of war as a juridical

¹ I have used a neutral definition of aggression derived from the *United Nations 1974 Definition on Aggression*.

or political category and its displacement by forms of violence in the name of humanity (Simpson 2004a).

Ultimately, preferences—changeable, protean, contingent not on values but on success, and subject to linguistic reformulations—may turn out to be poor predictors of behavior in the sphere of war. But what of liberalism in other domains? Is it the case that liberal states are more likely to adopt and support international legal rules (based largely, after all, on liberal principles)? Here I turn to the work of Slaughter.

3 THE ETHICS OF A NEW WORLD ORDER

Slaughter's work has two related strands. The first is a magnification and clarification of the new liberal commitment to distinguishing between liberal and illiberal states. This distinction is at the heart of some of this work, and generates a particular and heterodox view of international law. Public international law, traditionally a body of law that treated sovereigns as equals, is reinterpreted as a system whose subjects are to be differentiated for methodological and normative reasons. The problem of compliance, international law's *bête noire*, is solved by reference to the domestic preferences of relevant actors; liberal states comply, illiberal states defect. The task of international law is to promote liberal democracy in order to secure an internally generated culture of compliance.

The second strand involves de-emphasizing the state altogether in favor of "transgovernmentalism." The thankless, professional task of imposing liberal norms on illiberal agents (traditional international law) is abandoned or, at least, downgraded in favor of encouraging transnational judicial cooperation among liberal judicial organs (Slaughter 1995; 2004); developing informal networks of like-minded government instrumentalities (Slaughter 1997; 2004); prompting recalcitrant legislators to collaborate across borders (Slaughter 2004), and build formal institutions and informal machineries composed of liberal states (Slaughter 1994).

Before considering transgovernmentalism as a theory of governance, I want to return to the first precept of Slaughter's work and consider the behavioral suppositions that undergird it. Are liberal states better behaved? Or, to ask the question differently, do liberal states tend to comply with international law more regularly than nonliberal states, as we would anticipate from a reading of Moravcsik (1997)?

The answers are equivocal. Frequently, liberal states have pursued war in defiance of existing legal frameworks. In the area of violence and force (always a realist stronghold), it is not the case that liberal states have been more compliant with the international legal norms drafted in 1945 making the unilateral use of force illegal.

Breaches of the nonintervention norm have been widespread (often to depose democratically elected governments, for example in Chile and Guatemala). Neither liberal institutions nor liberal law has greatly constrained the appetite of liberal states for military intervention (Franck 1970).

In the case of participation in international judicial institutions, the evidence is again ambiguous. The International Court of Justice (a Wilsonian institution through and through) has failed to attract the support of the major liberal powers. It seems that factors other than domestic configurations or interest group dynamics seem to be critical in determining commitment to the international rule of law in this sphere at least.

The human rights and humanitarian law fields, each imbued with liberal ideals, have not always garnered the support of liberal states either. Australia, a state with compulsory voting and therefore very high rates of participation in the democratic process, has adopted an increasingly hostile attitude toward human rights norms in recent years. The United States, meanwhile, is now notorious for its rejection of several important multilateral initiatives (for example, the Ottawa Convention banning landmines, and the International Criminal Court Statute), and its commitment to human rights institutions and norms has been patchy to say the least. Meanwhile, Jose Alvarez has documented many other ways in which liberal states do not behave better (with respect to participation in environmental regimes (2001, 205), in the adoption of common trade commitments (2001, 207), or in their enthusiasm for regional human rights machinery (2001, 222)).

Indeed, it may be that the ethics of liberalism obstructs the sort of convergences that new liberalism describes and prescribes. If liberals are right about the normative and analytic priority to be accorded representative interests within states, then this might lead to an expectation that liberal states and domestic institutions will scrutinize and reject many international legal norms. It might also suggest that this *ought* to occur given the sentiments of the internally constituted elites.

But perhaps little of this matters when states themselves are being superseded, and here I turn to the transgovernmental aspect of Slaughter's work. Her most recent book, *A New World Order*, is imbued with a sort of Wilsonian American optimism (she admits as much at one point (2004, 257)) but one that departs from both Woodrow Wilson's reliance on states as the engines of change, and the romantic claims of cosmopolitans.² The dream of powerful public institutions or world government has been superseded by an embryonic reality of world governance. This is manifesto and diagnosis at the same time. What makes Slaughter's work so attractive is that she takes an existing set of relationships, encompassing everything from international conferences of judges to ad hoc mechanisms for economic management to regulatory cooperation across borders, and translates them into a theory of global governance or world law. Then she calls for the deepening of these

² Parts of the discussion in this section are drawn from Simpson (2004b).

relationships and offers some prescriptions for making this incipient system both just and effective.

Her recent work is a corrective to the dominant view that diplomacy is about executive-level inter-state exchange. It is not that law and politics do not continue to be managed and developed at these executive levels; rather, Slaughter's argument goes, it gets done in many other places as well. While the global media remain fixated on the elected leaders of the United States, the United Kingdom, and France, the stuff of global law is being molded and transformed in other places, by other people—by the Bank for International Settlements, by the International Association of Insurance Supervisors, by the Committee on International Judicial Relations, or by the Global Parliamentarians.

This is apiece with Slaughter's career-long commitment to demolishing the image of states as monolithic unitary actors (as in "the United States is opposed to the International Criminal Court") or organized around the inclinations of great men (as in "Blair and Bush have plans for the international order"). Billiard balls are displaced by "regulatory, judicial and legislative channels" (Slaughter 2004, 5) through which parts of states engage with each other transnationally. In this way, Slaughter purports to solve a paradox of global relations: We need more government but we want less. The answer is found in the transition from government (hierarchical, sometimes sclerotic, inflexible, and inattentive) to governance (multiple, lateral, adaptable, permeable), and from the unitary state ("Blair," the "United Kingdom") to the disaggregated state (Britain's regulators, legislators, and judges, among others). At the same time, Slaughter seeks to dislodge a clichéd view of the world in which the hegemony of the great powers or rapacity of global capital is tempered only by civil, nongovernmental society. This view merely opposes the "passion" (of nongovernmental organizations) to the "interests" (of governments) and "profit-motive" (of corporate actors). What is required to keep all these elements in check is the neutral expertise of transnational actors; a technocratic turn, in other words, toward networks of regulators, judges, and legislators engaging in three types of behavior: information or cooperation, enforcement or compliance, and harmonization or convergence.

In the networked world order, regulatory, judicial, and legislative networks will spread. Networks of networks, such as the Commonwealth or the Asia-Pacific Economic Cooperation, will facilitate the business of global interaction, while vertical networks make transgovernmentalism more effective and international organizations continue to foster and encourage networks.

Slaughter's work, then, is a retort to two highly fashionable images of international society: the hegemony of the great powers and the power of civil society. At this level, it succeeds. It alerts us to the rise of an international technocracy capable of wielding power or converting soft power into hard power. In the remainder of this section, I want to pursue two possible lines of critique. The first involves challenging the picture of the world on offer here. The second demands of new

liberals like Slaughter a better account of what these governmental networks are *for*. What is the ethical content of transgovernmentalism? In particular, is it open to the same criticism as Moravcsik (1997)—that is, that it does not take politics seriously enough?

The world of war, death, poverty, and resistance does not feature large in Slaughter (2004). (When Slaughter (2004, 26) talks about Iraq she uses it as a concrete example of how government networks could rebuild a society. Networks of foreign judges could offer technical training to Iraqi judges, regulators could rebuild banking systems, and legislators could teach democracy.) There is little reference to the way in which the new world order is so congenial to what is often a highly exploitative capitalist class or the way in which extreme poverty is viewed as largely acceptable by the political classes by whom Slaughter sets so much store. Politics, repeatedly, is sidelined.³ What, though, of the content of new liberal norms? What is it that new liberalism seeks to achieve? There is a revealing sentence toward the end of Slaughter's book (2004, 260): "the content of these specific principles is less important in many ways than the simple fact that there be principles." *A New World Order* promises novelty, change, and prescription. And, as well as this, it tells us where, and by whom, this new order is being created. The revolutionary class is the technocratic class.

But if it is, what is it that these networks are trying, or ought to be trying, to create? What is the content of the new world order? No doubt, it is "a deeply human creation motivated by human aspiration" (Slaughter 2004, 133), but what is it being created *for*? When the underlying assumptions are that people want to work together to build a decent world order, then the underlying normative commitments surely have to be quite thin, since the deep-seated conflicts about the specifics are, inevitably, elided. The UN Secretary-General's Global Compact is a case in point. This is commended as "collective learning in action" (Slaughter 2004, 192). The image is of corporate actors working with civil society, labor, and the UN to offer the global market "a human face."⁴ The emphasis is on solutions and learning. But solutions to what? Judged by the conduct of corporations in the early twenty-first century, it is legitimate to argue that often what corporations want and what the market demands are buying and selling in the absence of a human face. If corporations are psychopathic then the Global Compact is likely to be hugely

³ For example, the sharp politics of Guantanamo Bay and the anxieties it has provoked do not feature. Yet, the detention without trial of those incarcerated there is not without relevance to Slaughter's thesis. In particular, the four aspects of judicial comity described by Slaughter (deference, localism, rights, and engagement) (2004, 87) each seem relevant to the way judges have approached the detention of nationals in Cuba. In the English Appeal Court decision of *Abbasi*, for example, the Court was critical of the United States for breaching fundamental norms of human rights law, engaged with US courts over the appropriate norms to be applied, and deferred to these better-situated courts in the hope that they would provide resolution (see *Abbasi v. Secretary of State* 2002).

⁴ UN Secretary-General Kofi Annan's address to the World Economic Forum, Davos, 28 Jan. 1999, quoted in Slaughter (2004, 192).

helpful to them in presenting a human face to the world (human faces after all are marketable), while continuing with business as usual (Achbar, Abbott, and Bakan 2004).

But Slaughter is at the vanguard of a liberal internationalism that views itself as progressive and humanitarian: for better “stewardship” of the earth, in favor of human dignity (and human rights), hostile to the death penalty, worried about the “excesses” of capitalism, and multilateralist (in the broadest sense). Her just world order is as “inclusive, tolerant, respectful and decentralised as possible” (Slaughter 2004, 217), but is this new liberal vision of technocratic networks thick enough to sustain its own normative preferences? Much of Slaughter’s work is about procedure—more transparency, deliberative equality, legitimate difference—but there is not enough by way of substantive commitments. To be sure, inclusiveness as a procedural norm has certain substantive implications. It may be that the Montreal Consensus, with its emphasis on permitting “developing countries and poor countries [to] share in the benefits of the global economy” (Slaughter 2004, 246), is something to support, but if this is so we want to know more about which networks will encourage this sort of policy, what the opposition is, and what sort of sacrifices need to be made to achieve a just global political economy.

Ultimately, the “global transgovernmental constitution” (self-consciously mimicking the principles of James Madison and others), unless it grapples with the origins of politics and the hard choices of global redistribution, may well allow the reproduction of many of those hierarchies, oppressions, and substantive inequalities that many new liberals sincerely wish to resist.

4 FORGING A WORLD OF LIBERTY UNDER LAW

If Moravcsik provides the theoretical muscle and Slaughter the descriptive power, then *Forging a World of Liberty under Law* (Ikenberry and Slaughter 2006—a restatement and development of themes found in earlier work but this time conjoined, sometimes awkwardly, to a project to re-envision US national security) is a full-blown set of policy prescriptions—an application to join the “rulership cadre of states, promoting wise and effective statecraft” (Kennedy 1999, 103).

The title enunciates some of the main conceits of new liberalism. This is an order that, if it is to emerge, will do so not through an incremental flourishing of local projects or an accretion of good deeds or the facilitation of ideas and practices on a small scale. This is a world to be “forged,” sometimes through military intervention, sometimes through economic integration. It is a world of liberty (not justice or

equality or opportunity) in which states that practice the virtues of freedom and democracy will flourish. Finally, it is a world in which law is the handmaiden to liberty, promoting it at every turn.

Some classic new liberal themes are prominent in this document. There is a call for the creation of a world of "mature liberal democracies" (Ikenberry and Slaughter 2006, 19). There is a Kantian tolerance for (imperfect) existing institutions combined with the promise that much of this will be swept away by new, more authentically liberal institutions. Thus, there are suggestions for a tinkering with Security Council membership and an endorsement of the High Level Panel's proposal for a "Responsibility to Protect"—the latter a reaffirmation of the Rawlsian principle that liberal states ought to have the right to intervene in illiberal states (Rawls 1999; United Nations 2004).

The Princeton Project contains a great deal of good sense (the need to update conceptions of deterrence), liberal ethics (concern for issues of global health, a genuine reaching out to the citizens of foreign states), and some political daring (a national gasoline tax in the United States). I am more interested, for these purposes, in concentrating on three proclivities that hover over this document (and cast into relief some of the preoccupations of new liberalism as an ideological program, whatever the nature of its scientific ambitions).

First, there is a curious lack of faith in the domestic processes that are supposed to energize the new liberal project. Hugo Chavez, for example, a man elected three times, is a "populist" guilty of "fomenting a continent-wide anti-US coalition" (Ikenberry and Slaughter 2006, 11). This cold war rhetoric sits uneasily with the ardor for democratic processes on display elsewhere. A deeper contradiction lies at the heart of the democratic governance project in international law. It may be that the purpose of international law is to restrain sovereigns (liberty under law), but, if those sovereigns exercise authority as an expression of popular will, then international law must have to be, at times, antidemocratic and antilibertarian (Rabkin 2004; Anderson 2005, 1308–9). In *Forging a World of Liberty*, members of the Concert of Democracies are required to "pledge not to use force against one another" (Ikenberry and Slaughter 2006, 7). If such pledges are necessary in a world of democratic states, it may be because the popular will can become bellicose or because liberal states might have good reason to attack one another (for example, over remaining oil stocks, in response to mass refugee flows, because of chauvinistic media campaigns). It is not clear, in such cases, why international law is to be taken more seriously than these (sometimes warmongering) domestic preferences.

Secondly, there is a classic split between the political and the pre-political. Thus, just as "preferences" have a pre-political origin, so, too, do "threats." Some threats, according to the authors, are political (extremists inflicting catastrophic damage), while others are naturally occurring and "not politically motivated" (such as nuclear meltdown, climate change, and infectious disease). Only an emaciated conception of the political could permit these sorts of distinctions, and they are

buttressed by analogous divisions between culture (them) and strategy (us). Extremists, usually Islamic fascists who would “willingly martyr themselves,” are to be distinguished from rational actors like the Soviet Union or the United States (both of which participated in a deterrence regime that assumed a capacity and willingness to martyr whole nations).

There is, thirdly, an unstable dual commitment to both global justice and American well-being. The centrality of US exceptionalism (mostly unstated in early new liberal work) becomes a non-negotiable norm in the *Forging a World of Liberty* proposals. The basic objective of US strategy must be “to protect . . . *the American way of life*” (Ikenberry and Slaughter 2006, 14, emphasis added). What is not fully explained is how the American way of life can be protected in a way that is compatible with a liberal global order. It may be, instead, that the levels of consumption, the degree of ecological destruction, and the militarism that is required to sustain the American (and, indeed, Western) project are fundamentally at odds with building a stable and decent political order. This centrally important question is confronted in neither the Princeton Project document nor Slaughter’s *New World Order*. Indeed, sometimes the ethics of new liberalism is best demonstrated by its aporia; some matters (fear, retribution, poverty, the skewing effects of private wealth) are screened out.

In the end, new liberalism is an important and rigorous approach to world politics and international relations. Its virtues are manifold (a refusal readily to accept the primacy of raw power, an attention to domestic spaces as engines of international change, a genuinely parsimonious and compelling initial theorization, an ambitious and intellectually confident grand theory of global order). As a theory of politics and ethics, however, it remains insensitive to the enormity of private power, the subtlety of political motivation, and the intermingling of the social and the political.

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